

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**I.T.R. No.69 of 1990
Date of Decision:24.10.2006**

**The Commissioner of Income-tax, Haryana
Rohtak**

.....Petitioner

Vs.

M/s Bharat Tubewell Store, Sirsa

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL**

Present:- Shri Yogesh Putney, Advocate for the petitioner- Revenue.

ADARSH KUMAR GOEL, J.

The following questions of law have been referred for opinion of this Court arising out of order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh in I.T.A. No.1179 of 1971-72 dated 20.11.1982 for the assessment year 1968-69:-

- “1. Whether the Tribunal was right in cancelling the penalty of Rs.20,000/- levied on the assessee u/s 271(1)(c)?
2. Whether the Tribunal had erred in following the decision in the case of Karnail Singh even though that decision had been over-ruled by the Full Bench in the case of Vishwakarma Industries?”

Learned Counsel for the Revenue points out that the Tribunal followed the judgment of this Court in **Addl. CIT Vs. Karnail Singh,**

(1974) 94 ITR 505 which was later on overruled by Full Bench in **Vishwakarma Industries vs. The Commissioner of Income Tax, Amritsar 135 ITR 652 (FB)** and it was held that burden to prove concealment of income for imposing penalty was not on the revenue.

Though there is merit in the contention raised on behalf of the Revenue that the view taken by the Tribunal is vitiated by wrong placing of onus of proof on the revenue which is contrary to law laid down by the Full Bench in **Vishwakarma Industries'** case (supra), having regard to the amount involved and the nature of issue referred, we are of the view that it would not be appropriate to remand the case back for recording a fresh finding as to the effect on merits by shifting the onus of proof from Revenue to the Assessee. Therefore, we return the reference unanswered.

**(ADARSH KUMAR GOEL)
JUDGE**

**October 24, 2006
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**(RAJESH BINDAL)
JUDGE**